

**Three Trails OHV Project
Appeal Issues and Responses**
Deschutes National Forest
Crescent Ranger District
March 2011

Appellants

Cascadia Wildlands ,
Cascadia's Ecosystem Advocates/LOWD,
Oregon Wild, Sierra Club, Wildland CPR, and
Winter Wildlands Alliance

Appeal Number

11-06-00-11-215

Appellant's Statement 1: Appellant claims this project represents an improper segmentation of the National Environmental Policy Act (NEPA) process. Appellant states, "The Forest Supervisors have chosen to improperly segment public involvement and environmental analysis into multiple projects that clearly are related in scope and time." Appeal at 4.

Response: I find the Responsible Official did not improperly segment the public involvement process and environmental analysis into multiple projects and that the projects are not related in scope and time.

Connected actions are those that are closely related and therefore should be discussed in the same impact statement. Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement. The third are similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement. 40 CFR 1508.25(a)(1)

In order for projects to be related in scope, they must have connected actions, cumulative actions, and/or similar actions. The Three Trails Off-Highway Vehicle (OHV) project does not have connected actions to other OHV projects in the area (Lava Rock OHV, East Fort Rock OHV, and Forest-wide Travel Management). The Three Trails project will not automatically trigger other actions in these other projects. Each of these separate projects will designate their own trail systems for OHV users and there are no related actions between the projects except that they are similar types of projects. The

Three Trails project can proceed without the implementation of other projects since there are no trail systems in one project that are reliant upon the other project. There are also no interdependent parts between the Three Trails project and other projects which are part of a larger action.

When viewed with other proposed actions, the Responsible Official found appropriately that the Three Trails project will not have cumulatively significant impacts. In the recreation specialist section of Chapter 3 of the Final Environmental Impact Statement (FEIS), it states that the cumulative effects of the Lava Rock Motorized Trails project and the Ochoco Summit Motorized Trail project would reduce to some degree the potential adverse effects of the actions proposed in the EIS on motorized recreational trail opportunities on the Deschutes and Ochoco National Forests. While all of these separate projects (Lava Rock OHV, East Fort Rock OHV, and Forest-wide Travel Management) are similar types of projects, agencies are not required to analyze them in the same impact statement. 40 CFR 1508.25(a)(3).

Appellant's Statement 2: Appellant states the project "must be considered a connected action with respect to the Forest's pending compliance with the Travel Management Rule." Appeal at 4. Appellant states, "the four Deschutes-Ochoco National Forest OHV route proposals are part of the whole of the Forests' Travel Management process, and should be considered under a single, comprehensive EIS." Appeal at 5.

Response: I find that the Responsible Official appropriately considered the Three Trails OHV project as a single action separate from the Travel Management Rule and not as a connected action because neither project is dependent upon the other.

The Travel Management Rule directs national forests to designate roads and trails for public and administrative uses. 36 CFR 212.51. The Forest is preparing an EIS that complies with that rule; that EIS is listed as an ongoing action in the Three Trails EIS at 75.

As for considering all OHV projects in one Environmental Impact Statement (EIS), the Council on Environmental Quality (CEQ) regulations for implementing NEPA at 40 CFR 1508.25 list three scenarios under which actions are considered connected:

Actions are connected if they: (i) Automatically trigger other actions which may require environmental impact statements. (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously. (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

The Record of Decision (ROD) for the Three Trails OHV Project states very clearly that this action is not connected to any other management decision and that the Three Trails project is a stand-alone decision. "Implementation of the Travel Management Rule does not hinge on the implementation of this project, Lava Rock OHV Trail System proposal, or any other proposed or existing OHV trail system in central Oregon." ROD at

26. I find that each proposal is clearly independent of the other, as they do not automatically trigger other actions, can proceed independently, and are not dependant on any other action for their justification.

Appellant's Statements 3: Appellant states, "the EIS analysis cannot treat the potential for designating OHV routes with linkages to other jurisdictions as part of the 'the existing condition.'" Appeal at 7. In addition, Appellant states, "The FEIS incorrectly lists the status of the Fremont-Winema Travel Management Plan as ongoing [and if] the Deschutes National Forest had been working collaboratively with the Fremont-Winema National Forest...the complete status of the latter's Forest plan would have been acknowledged in the FEIS." Appeal at 7. Appellant claims this is evidence that this project lacks a supportable cumulative effects analysis regarding OHV routes connecting to other land ownerships. Appeal at 7-9.

Response: I find that the cumulative effects of the selected alternative (including linkages to other jurisdictions) are adequately analyzed and displayed in the FEIS and ROD.

40 CFR 1508.7 states: "Cumulative impact' is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal), or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time". Furthermore, "When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking." 40 CFR 1502.22.

Current and predicted future use of OHV trails in the planning area is disclosed as part of the existing condition (FEIS at 91-95) and in the transportation section (FEIS at 392-400). These are appropriate sections of the FEIS for displaying the current use of trail systems in and around the project area; additionally, the District included predicted future use on pages 91-95 of the FEIS; those projections are based on current survey data (existing condition).

The FEIS displays the cumulative effects of those current and future activities, including linkages to other jurisdictions, in the cumulative effects analysis on pages 73, 75, and 127 of the FEIS and on page 26 of the ROD. The current and future activities considered include the Ochoco Summit Motorized Trail Project (124 miles), the Lava Rock Motorized Trails Project (250 miles), and Meadow Lakes Restoration Project. The ongoing Deschutes/Ochoco Travel Management Plan (TMP) EIS is described on pages 77-78 of the FEIS, and the cumulative effects of the TMP are documented on pages 326 and 573 of the FEIS. Additionally, Three Trails project correctly analyzed the potential for cumulative effects from adjacent forests, including the Fremont-Winema Travel Management Project (FEIS at 73), the Umpqua Travel Management Project (FEIS at 75), and the Willamette Travel Management Project (FEIS at 75); these

projects were also considered, regardless of what stage of planning or implementation the projects were in.

Appellant's Statement 4: Appellant states, "we are greatly concerned by the magnitude and intensity of the OHV route system approved in the FEIS/ROD compared to what was disclosed in scoping for the project." Appeal at 10. Specifically, appellant references the scoping notice proposal of "approximately 110-130 miles" of trails versus the FEIS proposal of "222 miles...within a 93,016-acre planning area." Appeal at 9-10.

Response: I find the Responsible Official appropriately responded to issues raised during scoping in development of a range of alternatives, and in particular, in developing Alternative E.

The CEQ regulations direct agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 40 CFR 1501.2(c). Those unresolved conflicts, or issues, serve to highlight effects or unintended consequences that may result from the proposed action (FSH 1909.15(12.4)), and lead to the development of alternatives. An alternative should "meet the purpose and need and address one or more significant issues related to the proposed action". 36 CFR 220.5(e). The EIS must then present the environmental impacts of the proposal and the alternatives in comparative form which enables the agency to clearly define the issues and provide a clear basis for choice. 40 CFR 1502.14.

Alternative E appropriately differs from the proposed action (Alternative B), because it was developed to respond to key issues #1, #2, and #4. FEIS at 37, 51. Key issue #1 deals with providing the recreational experience that riders want. In response to this issue, Alternative E includes 80 miles of additional routes to connect high clearance vehicles, bringing the total route miles to 222. ROD at 1. The biggest difference between the proposed action and Alternative E with regards to total miles is the miles of shared-use roads, which are roads on which both highway legal and non-highway legal vehicles are operating as part of the designated trail system. FEIS at 65.

In examining the range of alternatives presented in the FEIS on pages 65-69, I find that the Responsible Official appropriately developed issues in response to scoping comments received on the proposed action, appropriately developed alternatives in response to issues, and made his decision based on the framework set forth in the FEIS at 26. See also response to Appellant's Statement #19.

Appellant's Statement 5: Appellant states the purpose and need for this project was too narrowly defined. Specifically, "[t]he approach of quantifying a range of mileage of engineered OHV routes that would be achieved by this project precluded any receptivity to...an alternative to be analyzed in the EIS that contained less than 100 miles of engineered OHV trails." Appeal at 11.

Response: I find that the purpose and need is adequately defined, is not narrow in scope, and meets CEQ regulations. I also find that the proposed action correctly quantified the mileage of designated OHV routes to meet the purpose and need.

CEQ requires that “the statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 CFR 1502.13.

The agency has discretion in identifying the purpose and need, which in this case is to provide a designated trail system for OHVs. The FEIS describes the purpose and need as “a need to provide for a designated trail system where there is some community support on the Crescent Ranger District in a suitable and sustainable location while considering other forest uses.” FEIS at 25. Contrary to the appellant’s statement, this need is not quantified and does not preclude analysis of any mileages of OHV trails.

After briefly describing the purpose and need, the agency then proposes an action to meet the it. FSH 1909.15 (05). Given the need for action was to provide a designated trail system, the agency collaboratively developed the proposed action to respond to that need, which is described in the FEIS as Alternative B. FEIS at 25.

Appellant’s Statement 6: Appellant claims the No Action alternative is worded in a way that generates bias for selecting an action alternative. Appellant lists three ways in which this bias occurs: (1) “erroneous assumptions” used to define the No Action alternative; (2) statements that taking no action will result in ongoing user-created trail proliferation; and (3) stating “herbaceous cover will continue to be removed as trail systems and parking areas expand.” Appeal at 11. Appellant also claims the No Action alternative ignores the ongoing travel management process and fails to present a valid baseline against which to measure action alternative impacts. Appeal at 12.

Response: I find the Responsible Official did not phrase the No Action alternative to create bias for selecting an action alternative, nor were there erroneous assumptions in the alternative description.

The CEQ regulations at 40 CFR 1502.14(d) state that agencies shall include the alternative of no action. The no action alternative (Alternative A), described on pages 34-37 of the FEIS, is not worded in a way that emphasizes the selection of an action alternative. Page 34 of the FEIS states: “The No Action Alternative is included as a baseline comparison of continuing the existing conditions without implementing the proposed actions.” Page 36 of the FEIS states: “Motorized travel on Maintenance Level 1 roads and user created trails, if not specified as an open route in one of the action alternatives would be prohibited.”

Page 34 of FEIS acknowledges that herbaceous cover will continue be removed because no action will result in the continued loss of herbaceous cover as trails and parking areas expand. This assessment of continuation of the existing condition is based on the estimate that user-created trails have expanded at least two-to-five miles

on a yearly basis and documentation that off-highway vehicle sales in Oregon have increased more than 400% since 1990. FEIS at 34, 78.

I also find that the FEIS does not ignore the forest-wide travel management project that is currently in the planning phase. In responding to this same comment raised by the appellant, the FEIS at 573 states the “Three Trails OHV project document refers to the Travel Management Rule and Travel Management DEIS nearly 100 times as a foreseeable action as defined in 36 CFR 220.3.” At the time the FEIS and ROD were completed, the Schedule of Proposed Actions for the forest-wide Travel Management project estimated a decision to be made in March of 2011. Thus, the Three Trails OHV project could not consider implementation of the forest-wide Travel Management project as its baseline condition, because no decision had been made on that project by the time the Three Trails project was completed.

Appellant’s Statement 7: Appellant claims the purpose and need is unnecessarily biased towards increasing motorized use. Appellant cites that “OHV riders as a whole [comprise] *only two percent* of all recreational visitation...” and that a project this size is not justifiable. Appeal at 12.

Response: I find that the purpose and need is not biased toward increasing motorized use.

CEQ requires that “the statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 CFR 1502.13. The agency has discretion in identifying the purpose and need for action; see response to Appellant’s Statement #5 for further details on the purpose and need.

The FEIS at 579 also addressed the appellant’s statement that a project this size is unjustifiable because of the perceived limited OHV use in the area. As stated on page 579, the data cited by the appellant has limited application to the underlying need for this project. The proposed action was, however, based on public comment obtained through public meetings and on visible use that is occurring on the Crescent Ranger District in the project area. FEIS at 579. See also response to Appellant’s Statement #5 for details on the proposed action.

Based on the above analysis and the information found in the FEIS, I find this project meets regulations by clearly stating the underlying purpose and need, and by developing a proposed action to meet that need.

Appellant’s Statement 8: Appellant states the FEIS contains an insufficient range of action alternatives, which predetermines a specific outcome without analyzing other possible alternatives. Appeal at 15. Appellant also asserts... “[t]he approach of quantifying a range of mileage of engineered OHV routes that would be achieved by this project precluded any receptivity to...an alternative to be analyzed in the EIS that contained less than 100 miles of engineered OHV trails.” Appeal at 11.

Response: I find the Responsible Official considered a sufficient range of action alternatives.

40 CFR 1502.14 states that a decision maker should rigorously explore and objectively evaluate all reasonable alternatives, while 36 CFR 220.5(e) states that the EIS shall document the examination of reasonable alternatives to the proposed action. An alternative should meet the purpose and need and address one or more significant issues related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. The Responsible Official does not have to analyze an infinite range of alternatives, only a reasonable number depending on the nature of the proposal. 40 CFR 1502.14.

The Three Trails project considered five alternatives with sufficient description and rationale (FEIS at 34-58) and explained why other alternatives were not further analyzed in detail. The alternatives considered in detail were developed to address the issues presented from scoping and to meet the purpose and need. On pages 62-65 of the FEIS, there are several alternatives considered but eliminated from detailed analysis, including an alternative that prohibits cross country travel without a designated trail system.

The FEIS at 575 also addressed this appeal point. As stated there, an alternative similar to what the appellant describes was considered but eliminated from detailed study, because it would not meet the purpose and need. Designating a system of trails could not be achieved solely on shared-use roads in suitable or sustainable locations.

Based on the above analysis, I find that the range of miles of OHV trails described by the proposed action did not limit the opportunity to select or develop other alternatives and that an adequate range of alternatives was analyzed.

Appellant's Statement 9: Appellant states that the FEIS does not consider a reasonable range of alternatives, instead focusing on "four very similar actions and a misleading no-action alternative." Appeal at 15. Appellant claims the alternatives considered are insufficient and do not respond to key issues identified during scoping. Appeal at 15.

Response: I find the Responsible Official considered a reasonable range of alternatives that responded to the key issues identified during scoping.

40 CFR 1502.14 states that a "decision maker should rigorously explore and objectively evaluate all reasonable alternatives". Using the scoping process, decision makers should not only identify significant environmental issues deserving of study, but should also deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly. 40 CFR 1501.7. The scope of the environmental impact statement includes the range of alternatives. 40 CFR 1508.25.

Page 30 of the FEIS describes the issues raised during scoping that were used to develop alternatives; page 33 of the FEIS lists issues that were raised during scoping that did not result in different alternatives or design elements, but were considered during the analysis process and discussed in Chapter 3. The alternatives considered in detail are presented on pages 34-58 and Chapter 3 provides a more thorough description of how each alternative addresses each issue provided in Chapter 2. Alternative A, the no action alternative is included as a baseline comparison of continuing the existing conditions without implementing the proposed action.

In addition to the four action alternatives that were considered in detailed study, the FEIS documented 13 other alternatives that were considered, but eliminated from detailed study; the FEIS complies with 40 CFR 1502.14(a) by briefly discussing the reason these alternatives were eliminated. See also response to Appellant's Statement #8.

Appellant's Statement 10: Appellant claims that the construction of "approximately four miles of trail around the edge of Black Rock lava flow" would preclude the area for future wilderness designation, despite the FEIS' statements to the contrary. Appeal at 16-17.

Response: I find that the Responsible Official appropriately considered the effects of the project on potential wilderness designation around the Black Rock lava flow.

The Forest Service is required to consider the effects of proposed projects on potential wilderness areas. FSH 1909.21, Chapter 70. The Forest Service evaluated the area around Black Rock lava flow as a potential wilderness. FEIS at 120. The analysis documents that the proposed trail construction/routing (two miles for the selected Alternative E) would not occur in an area that met Forest Service criteria for potential wilderness and that the proposed activities would not preclude the lava feature from being considered as potential wilderness in the future.

Appellant's Statement 11: Appellant claims, "it is not clear whether existing user-created OHV routes would be designated for use in the [Davis] LSR." Appellant also claims, "it is unclear whether LRMP standards or those of the 1995 Davis Late-Successional Reserve Assessment discourage OHV activity or the designation of OHV-related facilities...in the LSR and whether the projected increased OHV use is compatible with LSR management objectives." Appeal at 17.

Response: I find that the Responsible Official considered and demonstrated that the Three Trails OHV Project was consistent with the 1994 Northwest Forest Plan (NWFP), the 1995 Davis Late-Successional Reserve Assessment (LSRA), and the 2007 Davis LSRA (revised). Consistency with the various guidance documents is outlined in the FEIS on page 327.

The 1994 NWFP ROD outlines acceptable management guidelines within Late-Successional Reserves (LSR). NWFP ROD at C-17. The Davis LSRA was completed in 1995 and revised in 2007 following a large fire in the Davis Lake area. The NWFP ROD and the Davis LSRA amends the 1990 Deschutes National Forest Land and Resource Management Plan (LRMP). The 2007 Davis LSRA provides guidance for Travel and Access Management. LSRA at 116-118. Along with other recommendations, the LSRA recommends that all winter and summer motorized access is to be on designated routes by the year 2013, which essentially discourages off-trail OHV activity.

The Responsible Official determined that the Three Trails OHV Project is consistent with the Davis LSRA recommendations. FEIS at 327; ROD at 21. Within the Davis LSR, the Three Trails OHV Project will not construct any new roads (FEIS at 605); will not develop any new trails, staging areas, or campgrounds; and requires that summer motorized access be limited to designated roads and trails. The proposed OHV trails will use existing roads, utility maintenance roads, horse trails, and/or snowmobile trails. ROD at 21. The Three Trails OHV Project will also incrementally reduce open road densities within the Davis LSR to help attain target open road densities as described in the Davis LSRA. FEIS at 327. In addition, comparison of the map found in the FEIS at 527 with the maps in the back of the document clearly shows that there are no user-created roads/trails in the Davis LSR that are included in Alternative E.

Appellant's Statement 12: Appellant claims, "[w]ith the exception of bird watching at Crescent Creek Campground...the FEIS fails to minimize OHV-related conflicts with other recreational uses in the planning area." Appeal at 18.

Response: I find that the Responsible Official considered other recreational uses and resource values, including the potential for conflict, when analyzing the effects of the Three Trails OHV Project.

Executive Order 11644 (1972), Section 3(a)(3), requires that "areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors." The 2005 Travel Management Rule, 36 CFR 212.55 (criteria for designation of roads, trails, and areas), states that the Responsible Official shall consider the effects of "...conflicts among uses of National Forest System lands..."

The Responsible Official analyzed the potential for use conflicts, solicited public comments, and consulted with the Environmental Protection Agency (EPA) on the issue. The potential for use conflicts was at the core of Key Issue #4: *There may be incompatibility where the designated trail system overlaps the Metolius-Windigo Horse Trail system.* Key Issue #4 was raised in the public scoping period and was then used to develop the range of alternatives analyzed on page 33 of the FEIS. The FEIS also analyzed use conflicts in the recreation section of Chapter 3 under "User conflicts". FEIS at 83. User conflicts are limited in the area, as documented on pages 88 and 89

of the FEIS; most user conflicts were expressed in terms of noise. FEIS at 88. As such, the FEIS further analyzes the effects of noise and sound on a variety of user groups that might have a stake in the analysis area, such as private land owners, hunters, wilderness users, hikers, equestrians, and bird watchers. FEIS at 104-109. A mitigation measure is included in the FEIS at 59 to reduce the potential impact of noise on others.

Appellant's Statement 13: Appellant claims the Forest Service cannot designate a system of roads that minimizes impacts to the environment and non-motorized recreation without considering the effects of such designation on the system as a whole. Appellant also claims the decision needs additional alternatives "that actually evaluate past harm to the environment from motorized use and how that harm will be prevented from continuing into the future." Appeal at 19.

Response: I find the Responsible Official considered the direct, indirect and cumulative effects of the alternatives on the system as a whole.

40 CFR 1502.16 describes the environmental consequences section of an EIS as forming "the scientific and analytic basis for the comparisons under 1502.14... It shall include discussions of:

- (a) Direct effects and their significance (1508.8)
- (b) Indirect effects and their significance (1508.8)".

"'Cumulative impact' is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non Federal, or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR 1508.7).

Page 71 of the FEIS explains, "existing conditions reflect the aggregate impact of all prior human actions and natural events that have affected the environment that might contribute to cumulative effects." This explains how past impacts from OHVs are described within the existing condition sections of the FEIS. The environmental effects of the alternatives are described for the following resources: Recreation, Soil, Wildlife, Old Growth, Fisheries and Aquatics, Botany, Cultural Resources, Transportation System, Forested Vegetation, Climate Change, Fire and Fuels Management, Scenery, Social and Economics, and Air Quality. FEIS at 70-467.

The purpose of the project is to designate an OHV trail system in a suitable and sustainable location to limit impacts to other forest uses and resources. FEIS at 25. The proposed action and other action alternatives close roads and rehabilitate trails in order to reduce the impacts from past uses. FEIS at 24. The potential for future damage from OHV use is addressed through the development of an education, enforcement, safety and operational maintenance plan. FEIS at 423-430.

The range of alternatives has been addressed in Appellant's Statement #8 and #9. As such, I find that the alternatives analyzed in the FEIS adequately document the impacts from past OHV use, prescribe rehabilitation for areas that have been impacted that will no longer be used, and contain sufficient education and enforcement measures to mitigate the potential for future impacts.

Appellant's Statement 14: Appellant claims the exemption for over-snow vehicles in the 2005 Travel Management Rule is inconsistent with Executive Orders issued in 1972 and 1975 containing policy calling for a "unified Federal policy toward the use of such vehicles on the public lands." Appeal at 19.

Response: I find that the issue raised by the appellant is outside the scope of this analysis and decision. I find that the Responsible Official has used the definitions outlined in the 2005 Travel Management Rule and in Executive Orders 11644 and 11989 correctly and is consistent with the definitions given for over-snow vehicles and off-road vehicles. In addition, over-the-snow motorized access is exempt in the Travel Management Rule. 36 CFR 212.51.

Executive Order 11644 (1972), as amended in Section 2 by Executive Order 11989 (1977), defines off-road vehicles and the appropriate uses of off-road vehicles on public lands. The definition of off-road vehicles in Section 2 includes "any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain..."

The 2005 Travel Management Rule (36 CFR, part 212) maintains the definition for off-road vehicles as described in Executive Order 11989, however also defines over-snow vehicles as a separate type of vehicle from off-road vehicles. Over-snow vehicles are defined in 36 CFR, part 212.1 as "a motor vehicle that is designed for use over snow and that runs on a track or tracks and/or a ski or skis, while in use over snow."

The Responsible Official has used the definitions for over-snow vehicles and off-road vehicles correctly by differentiating between the two types of vehicles in the FEIS. The FEIS analyzes the designation of trails for motorized travel and does not include travel over snow. The dates of authorized use for the proposed system of trails are clearly defined. ROD at 2.

Appellant's Statement 15: Appellant claims the Forest Service must analyze "all of the foreseeable direct, indirect, and cumulative effect of its decisions, including those that occur year round [i.e., over-snow vehicles]." Appeal at 20.

Response: I find the Responsible Official considered all of the foreseeable direct, indirect, and cumulative effects of the project including winter motorized activities.

The Environmental Consequences section of an EIS should form "the scientific and analytic basis" for comparing alternatives. 40 CFR 1502.16. Agencies are directed to

include “include discussions (a) direct effects and their significance and (b) indirect effects.”

40 CFR 1508.7 states: “Cumulative impact’ is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non Federal, or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

Page 108 of the FEIS states that the effects of winter motorized recreation are not analyzed because the activities occur during a different season than the OHV use proposed in this analysis. The Responsible Official has decided that “a season of use will generally be May 1 – Oct. 31, dependent upon site-specific conditions.” ROD at 2. Therefore, it is appropriate that no cumulative effects analysis associated with winter motorized recreation is included in this analysis. I find that the FEIS is clear that addressing the cumulative impacts associated with winter motorized recreation is not necessary.

Appellant’s Statement 16: Appellant claims, “[t]he ROD for the Three Trails OHV Project failed to document the ability of the agency to monitor, enforce, and maintain that system.” Appeal at 20. Specifically, appellant claims the FEIS does not analyze impacts to road and trail budgets, the availability of funding, and the cost of maintaining a motorized system (including signage, enforcement, and map production). Appeal at 20-21.

Response: I find that the Responsible Official’s decision provides for public health and safety, protection of natural resources, and maintenance of trails. ROD at 17-25, 35.

The 2005 Travel Management Rule requires the Responsible Official to monitor the effects of motor vehicle use on designated roads and in designated areas under the jurisdiction of that responsible official, consistent with the applicable land management plan, as appropriate and feasible. 36 CFR 212.57. 40 CFR 1505.2(c) requires Federal agencies to adopt and implement a monitoring and enforcement process in order to minimize environmental harm from the alternative selected. This program shall be summarized and incorporated into the decision. Additionally, Federal agencies may provide for monitoring to assure that their decisions are carried out and implemented. 40 CFR 1505.3. In addition to complying with relevant monitoring requirements of an existing Land and Resource Monitoring Plan (FSH 1909.12(12)), Forest Service policy directs units to monitor actions to ensure that mitigation measures are met, anticipated results are achieved, and necessary adjustments are made to achieve desired results. FSH 1909.15, Chapter 54.

The Responsible Official has documented the monitoring and enforcement plan in several places. The monitoring and implementation plan is summarized in the ROD at page 35 and appropriately referenced back to the FEIS on page 59. Monitoring will be achieved using agency personnel and volunteers to accomplish multiple purposes,

including assuring that the project is implemented as intended, effects of activities are consistent with the intent, and to allow for adaptive management as needed. ROD at 35. The FEIS contains detailed information about the monitoring program by resource type (FEIS at 61-65) and implementation, education, and enforcement (FEIS at 423-426).

Appellant's Statement 17: Appellant claims the FEIS fails to disclose "independent studies that document a high rate of willful non-compliance among OHV riders for staying on routes within a designated OHV route system." Appeal at 21.

Response: I find that the Responsible Official reviewed the documentation provided during the public comment period and responded to the comments in the FEIS.

NEPA requires that an agency preparing an environmental impact statement shall assess and consider comments both individually and collectively and shall respond in the FEIS. 40 CFR 1503.4.

This comment was received from the Appellant during the public comment period on the draft EIS. The Forest addressed the concerns by stating that they reviewed the documents provided and determined that providing a trail system that meets users needs and wants will help encourage riders to comply with the rules and regulations. FEIS at 579. Additionally, the FEIS has a comprehensive education and enforcement section that outlines procedures for gaining compliance. FEIS at 423-426. Using trail rangers and law enforcement personnel, partnering with local OHV clubs, and education and signage are the main program components.

Appellant's Statement 18: Appellant claims, "[t]he absence of a landscape-scale travel analysis that includes a route-by-route assessment of the risks, problems, and benefits associated with current system routes, including ML1 and ML2 routes, leads to a fatal flaw in [minimum road system] identification and subsequent NEPA analysis..." Appeal at 23.

Response: I find that the Responsible Official appropriately included a route-by-route assessment of roads and trails covered by this analysis.

The Forest Service is required to identify the minimum road system necessary for the safe and efficient travel and for administration, utilization, and protection of National Forest System lands. 36 CFR 212.5(b).

The Forest Service conducted a thorough roads analysis that is in the project record (Three Trails Off-Highway Vehicle Project Record Binder #2, section 13, Transportation Report and Road Data Spreadsheet). This analysis included existing roads at all maintenance levels, user created routes, and trails. The analysis of the minimum road system for this project was incorporated into the decision (ROD at 2 and 24) and included in the FEIS (FEIS at 401, 451, and 457).

The responsible official determined the roads within the project area are the minimum road system necessary for safe and efficient travel and for administration, utilization, and protection of National Forest lands. The Responsible Official states that the Forest is consistent with the Travel Management Rule 36 CFR 212, Subpart A. He further states that the project demonstrates consistency with 36 CFR 212, Subpart B by identifying and maintaining an appropriately sized and environmentally sustainable road system in the project area that is responsive to ecological, economic and social concerns. FEIS at 451.

Appellant's Statement 19: Appellant claims, "the Forest Service did not adequately alert the public that it was considering identifying and implementing a minimum road system via this OHV project before the DEIS was released, denying the public an opportunity to comment on the [minimum road system] during scoping for the project." Appeal at 25.

Response: I find that the Responsible Official did a thorough job of informing the public at numerous intervals that the Three Trails OHV project was under analysis.

The Travel Management Rule states:

The public shall be allowed to participate in the designation of National Forest System roads, National Forest System trails, and areas on National Forest System lands and revising those designations pursuant to this subpart. Advance notice shall be given to allow for public comment, consistent with agency procedures under the National Environmental Policy Act, on proposed designations and revisions. 36 CFR 212.57(a).

The Forest notified the public in August, 2008, that the Forest was undertaking the second phase of travel management planning in the form of site-specific motorized trail access and development on the Bend/Fort Rock and Crescent Ranger Districts (Project Record, Binder 1, section 10 – Public Involvement). This notice invited the public to participate in public scoping meetings to discuss and brainstorm ways to develop a trail system that was known as "Three Trails". The notice included maps of areas with known restrictions and existing roads and trails. In October, 2008, letters were sent to property owners in the Two Rivers North subdivision notifying them of project development and planning. An NOI was published in the Federal Register on February 25, 2009 (FR Vol. 74, No. 36). Another invitation to comment (scoping) was sent to the public on January 27, 2009, and it provided an update of the planning process and invited the public to comment. This letter also informed the public on the timeline for release of the DEIS for public comment and included updated maps and project details. In August, 2009, the Forest sent an updated letter explaining the comments received and how the alternatives identified in the DEIS had been modified in the FEIS based on comments received and analyzed by the Forest.



File Code: 1570

Date: March 17, 2011

Route To:

Subject: Appeal Disposition - Three Trails OHV Environmental Impact Statement

To: Regional Forester, R-6

This memorandum reflects my recommendation regarding the disposition of the appeal on the Three Trails OHV Project Final Environmental Impact Statement and Record of Decision (ROD). I have enclosed a summary of the appellants' issues, along with a short description of my findings. The appeal review was conducted in accordance with 36 CFR 215 and regional procedures.

I recommend affirming the decision made by the Responsible Official. I have reviewed the project documentation provided by the Crescent Ranger District and considered the appellants' appeal issues. The decision documentation is consistent with the Deschutes National Forest Land and Resource Management Plan (as amended) and the Northwest Forest Plan (as amended).

I believe the project analysis adequately supports the decision and is consistent with law, regulation and policy. Specifically, the decision to designate routes and trails for motorized recreation use in the project area will reduce impacts of unregulated OHV use elsewhere on the Crescent Ranger District and reduce road densities on the Deschutes National Forest.

The appellants from the Cascadia Wildlands, Cascadia's Ecosystem Advocates/League of Wilderness Defenders, Sierra Club, Wildlands CPR, and Winter Wildlands Alliance request that the Responsible Official withdraw the ROD and issue a new decision that is compliant with law, regulation, and policy. The appellants' specifically request that the Deschutes and Ochoco National Forests first issue a decision on a travel management plan, then prepare a new EIS for this project that uses the travel management plan as the baseline condition, include over-the-snow vehicles, and proposes fewer designated miles and fewer routes that connect to other jurisdictions.

After reviewing the appeal record, I recommend that the requested relief be denied and the Responsible Official's decision be affirmed on all points. Enclosed with this memo are my responses to each appeal issue.

/s/ Jeff Walter
JEFF WALTER
Forest Supervisor

cc: Bradley Paul, Debbie Anderson





United States
Department of
Agriculture

Forest
Service

Pacific
Northwest
Region

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PO Box 3623
Portland, OR 97208-3623
503-808-2468

File Code: 1570

Date: March 21, 2011

Mr. Daniel Kruse
Legal Director
Cascadia Wildlands
P.O. Box 10455
Eugene, OR 97440

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7008 1200 0002 3962 7172**

Dear Mr. Kruse:

This constitutes my decision, pursuant to 36 CFR 215, on your appeal of Deschutes National Forest Supervisor John Allen's Record of Decision for the Crescent Ranger District's Three Trails Off-Highway Vehicle Project Final Environmental Impact Statement.

I have considered the appeal record for the project and the recommendations of the Appeal Reviewing Officer. The Appeal Reviewing Officer focused his review on the appeal record and the issues in your appeal. A copy of his recommendation is enclosed.

A review of the decision documentation indicates that consideration was given to the relevant, site-specific issues raised in your appeal. I find that the decision is in compliance with law, regulation, and policy, and there is no indication that it should be withdrawn.

I affirm the Responsible Official's decision and deny your requested relief. This constitutes the final administrative determination by the U.S. Department of Agriculture and is not subject to further administrative review.

Sincerely,

/s/ Dale L. Hom (for):

CALVIN N. JOYNER
Acting Regional Forester, R6

Enclosures

cc: Bradley Paul
Debbie Anderson
Susan Skakel
John P Allen
Holly Jewkes

